

**TOWN OF WESTFORD NON-ZONING WETLANDS BYLAW**  
**Chapter 171**  
(Updated to 7-21-05)  
**WETLANDS**

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**[HISTORY: Adopted by the Town of Westford 5-11-1987 Annual Town Meeting, Art. 21. Amendments noted where applicable.]**

**GENERAL REFERENCES**

Aquifer protection - See Ch. 61.  
Flood damage prevention - See Ch. 99.  
Water - See Ch. 169.  
Zoning - See Ch. 173.  
Subdivision of land - See Ch. 218.  
Wetlands Rules and Regulations - See Ch. 235.

**§171-1. Purpose.**

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in Westford by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater protection, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, shellfish and wildlife habitat and recreation and aquaculture values (collectively, the "wetland values protected by this chapter").

**§171-2. Prohibited activities; uses. [Amended 5-13-1991 ATM, Art. 22; 5-27-1994 ATM, Art. 24; STM 11-13-2000, Art. 10; STM 11/12/02, Art. 17; ATM 5/7/05, Art. 24.]**

- A. Except as permitted by the Conservation Commission or as provided by this chapter, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool or beach; upon or within one hundred (100) feet of any brook, stream, pond or lake or upon or within one hundred (100) feet of any land under said waters or within one hundred (100) feet of the one-hundred-year floodline as determined under the Federal Emergency Management Agency (FEMA).
- B. Use prohibitions. Within the protected 100 feet to the wetlands (hereinafter "buffer zone") and within the wetlands specified in §171-2.A, the Conservation Commission shall prohibit the following uses
  - (1) Except as provided below, no septic system or other sewage disposal system, or any component of any septic system or sewage disposal system, shall be installed in wetlands or within the buffer zone to any wetlands (for the purpose of this section, "septic system or other sewage disposal system" shall mean all components thereof, including but not limited to leaching fields; septic tanks; distribution boxes; pump chambers; any and all connecting pipes between the structure, tank, and leaching field; sewer mains; collector lines; pump stations; tanks; manholes; and any other system components). Provided, however, that the following limited installations and uses may be permitted:
    - (a) A septic system or other sewage disposal system, or components thereof, located within a buffer zone serving a structure existing prior to May 7, 1994, may be replaced within the buffer zone, provided that there is no other feasible alternate location; the capacity of the existing septic system or other sewage disposal

system, as shown in the Board of Health records, is not increased; and the proposed new septic system or other sewage disposal system is designed and located to achieve maximum environmental protection.

- (b) Where an existing structure or structures on a property is proposed to be razed and replaced with a new structure or structures or to be remodeled, including enlargement of the structure, the Conservation Commission may allow the installation of a septic system or other sewage disposal system, or components thereof, within a buffer zone or connecting lines or pipes in a wetland if the Conservation Commission finds that the applicant provided sufficient information from a competent source to clearly demonstrate, based upon existing site conditions, the nature of the proposed septic system or other sewage disposal system or components thereof, and special design measures, that the proposed septic system or other sewage disposal system or components thereof shall provide significantly better environmental protection than provided by the existing septic system or other sewage disposal system.
- (c) Further, the foregoing Section 171-2.B(1) shall not be construed to prohibit the installation of sewer mains, collector lines, pump stations, tanks, manholes or other components of any waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00 when said installation is to occur in relation to a parcel or contiguous parcels under the same ownership as of November 1, 2000 which have a waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00 with adequate existing capacity as determined by said Bureau of Resource Protection, and in existence as of November 1, 2000, and where DEP Bureau of Resource Protection has previously mandated that any new construction on the parcel or parcels must be connected to the existing waste water treatment facility, and it is necessary to cross through a Buffer Zone with an approved connection whose sole purpose is to connect from existing or proposed structures to the existing waste water treatment facility and where said installation in the Buffer Zone is to be located in a previously disturbed area within an existing Town maintained Right of Way.
- (d) Provided further that the foregoing Section 171-2.B(1) shall not be construed to prohibit the installation of sewer mains, collector lines, pump stations, tanks, manholes or other components of any existing waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00, whether or not said facility is

located in another Town when:

- a. said installation is to occur solely in relation to a parcel or contiguous parcels in Westford that have been continuously used for school purposes for no less than five years prior to said installation; and
- b. the existing wastewater treatment facility has adequate existing capacity as determined by the Bureau of Resource Protection to service the needs of the school to which it is connected; and
- c. it is necessary to cross through a Buffer Zone with an approved connection whose sole purpose is to connect the school structure(s) to the existing waste water treatment facility and where said installation in the Buffer Zone is to be located in a previously disturbed area within an existing Town maintained Right of Way or State Highway.”

(2) Dumping of any material.

(3) Storage of salts, fertilizers, heavy metals, petrochemical products or toxic substances.

### **§171-3. Exceptions.**

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and regulations adopted by the Commission.

The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission or its agent prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within twenty-one (21) days of commencement of an emergency project a permit application

shall be filed with the requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

**§171-4. Applications for permits; request for determination.**

- A. Written application shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- B. The Commission in an appropriate case may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, MGL C. 131, § 40.
- C. Any person desiring to know whether or not proposed activity or an area is subject to this chapter may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

**§171-5. Fees.**

- A. For notices of intent there shall be a twenty-five-dollar filing fee required in addition to the fee required under the Massachusetts Wetlands Protection Act regulations, as well as any consultant reimbursement fee as described below. For requests for determination the fee shall be twenty-five dollars (\$25.) in addition to any consultant reimbursement fee as described below. Applicants shall be required to pay a consultant reimbursement fee to compensate the town for reasonable consultant services incurred in considering applications under this chapter. Said consultant services shall be those of environmental scientists, hydrologists, civil engineers and other professional specialists qualified to access applications under this chapter and provide guidance to the Commission as to whether a permit may be issued under standards stated in § 171-7 of this chapter and what mitigation measures may be necessary to protect the Wetlands values listed above. Representative rate schedules of such consultants shall be kept on file on the Conservation Commission office. This fee is in addition to that required by the Wetlands Protection Act, MGL, C. 131, §40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request up to a maximum of seven thousand dollars

(\$7,000.). The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency. **[Amended 5-7-1988 ATM, Art. 16]**

**B. Fee schedule. [Amended 5-7-1988 ATM, Art. 16; 5-11-1993 ATM, Art. 22]**

- (1) To the extent that the applicant provides adequate engineering and environmental information as required by §171-4 of this chapter, the cost to the town of obtaining independent engineering review may be reduced and thus reduce the cost of consultant services (the variable fee).
- (2) The variable fee will be set by the Commission, not to exceed seven thousand dollars (\$7,000.). Failure to pay the variable fee set by the Commission will render the application incomplete.
- (3) No fee is charged for extensions of orders of conditions.
- (4) Town, county, state and federal projects are exempt from fees.

**§171-6. Notice and hearings.**

- A. At the time of the filing of a notice of intent or request for determination, the applicant shall submit a current list of abutters to the land for which the application is submitted according to the most recent records of the assessors, including those across a traveled way or body of water. The Commission shall provide a proper legal notice to the applicant, who shall then be responsible for mailing in a timely fashion to arrive several days before the scheduled hearing copies of the notice to said abutters. The applicant shall present to the Conservation Commission acceptable United States Post Office receipts showing that such a mailing has been performed. No public hearing under this chapter may open until such proof of notification has been presented to the Commission. When the applicant is other than the owner of the property, then the applicant must also mail a copy of the notice to the owner. **[Amended 5-11-1993 ATM, Art. 21]**

**B. Hearings.**

- (1) The Commission shall conduct a public hearing on any application or request for determination, with written notice by the Commission given at the expense of the applicant, five (5) working days prior to the hearing, in a newspaper of general circulation in the municipality.

- (2) The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination.
- (3) The Commission shall issue its permit or determination in writing within twenty-one (21) days of the day following the close of the public hearing thereon.
- (4) The Commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL C. 131, §40.
- (5) The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

**§171-7. Issuance or denial of permit; renewals; revocation.**

- A. If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in the regulations of the Commission; for failure to avoid or prevent unacceptable or cumulatively adverse effects upon the wetland values protected by this chapter; and where the Commission deems that no conditions are adequate to protect those values.

A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of the time and location of the work is given to the

Commission. The Commission may, at its discretion, extend any permit for up to three (3) periods of up to three (3) years each. [Amended 5-7-2005 ATM, Art. 25]

- C. For good cause the Commission may revoke or modify any permit issued under this chapter after public notice and public hearing, in accordance with the provisions of §171-6 and notice to the holder of the permit.
- D. The Commission in an appropriate case may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

#### **§171-8. Rules and regulations.**

- A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.
- B. At a minimum, these regulations shall define key terms in this chapter not inconsistent with this chapter.

#### **§171-9. Definitions.**

The following definitions shall apply in the interpretation and implementation of this chapter:

ALTER – Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

- A. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- C. Drainage or other disturbance of water level or water table.
- D. Dumping, discharging or filling with any material which may degrade water quality.
- E. Placing of fill, or removal of material, which would alter elevation.
- F. Driving of piles, erection or repair of buildings or structures of any kind.



- G. Placing of obstructions or material in a body of water.
- H. Destruction of plant life, including cutting of trees.
- I. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

BANK – Includes:

- A. The portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent floodplain or, in the absence of these, it occurs between a water body and an upland. A "bank" may be partially or totally vegetated or it may be comprised of exposed soil, gravel or stone.
- B. The upper boundary of a "bank" is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a "bank" is the mean annual low flow level.

BEACH – See definition for "bank."

BOG – See definition for "freshwater wetland."

BROOK – A body of running water, in accordance with the definition of "stream."

**BUFFER ZONE** – Shall be defined as all those areas that lie within one hundred (100) feet of the boundary of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool, beach, brook, stream, pond or lake or within one hundred (100) feet of the one- hundred-year floodline, as determined under the Federal Emergency Management Agency (FEMA). **[Added 5-7-1994 ATM, Art. 24]**

**FRESHWATER WETLAND** – Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for plant community for at least five (5) months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

**SWAMPS** - Areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage

frequently collects above the soil surface and where a significant part of the vegetational community is made up of, but is not limited to nor necessarily includes all, of the following plants or groups of plants: alders, ashes, azaleas, black alder, black spruce, buttonbush, American or white elm, highbush blueberry, larch, cowslip, poison sumac, red maple, skunk cabbage, sphagnum mosses, spicebush, black gum tupelo, sweet pepperbush, white cedar or willow.

- A. WET MEADOWS – Areas where groundwater is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag, vervain, thoroughwort, dock, false loosestrife, hydrophilic grasses, loosestrife, marsh fern, rushes, sedges, sensitive fern or smartweed.
- B. MARSHES – Areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums, bladderworts, bur reeds, buttonbush, cattails, duckweeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, pipeworts, pond weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water starworts or water willow.

LAKE – A body of water with a surface area of ten (10) or more acres, either artificial or natural.

MARSH – See definition for "freshwater wetland"

PERSON – Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

POND (INLAND) – Any open body of freshwater, either naturally occurring or man-made by impoundment, with a surface area observed or recorded within the last ten (10) years of at least ten thousand (10,000) square feet and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, "extended drought" shall mean any period of four (4) or more months during which the average rainfall for each month is fifty percent (50%) or less of the ten-year average for that same month. Basins or lagoons which are part of wastewater

treatment plants shall not be considered "ponds," nor shall swimming pools or other impervious man-made retention basins.

**STREAM** – Any body of running water, including brooks, continuous or intermittently flowing, moving in a definite channel in the surface of the ground.

**SWAMP** – See definition for "freshwater wetland."

**VERNAL POOL** – A vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program. [Added 5-13-1991 ATM, Art. 22]

#### **§171-10. Security.**

The intent of this §171-10 is to secure against the potential of significant environmental damage. As part of the permit issued under this chapter, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission to insure the protection of the interests of this chapter.

#### **§171-11. Enforcement; violations and penalties.**

- A. The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by enforcement orders and civil and criminal court actions.
- C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

- E. Any person who violates any provision of this chapter, regulations thereunder, or permits issued thereunder may be punished by a fine of not more than three hundred dollars (\$300.). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.
- F. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL C. 40, §21D.

**§171-12. Burden of proof.**

The applicant for a permit shall have the burden of providing by a preponderance of the credible evidence that the work proposed in the application will not have significant or cumulative effect upon the wetland values protected by this chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**§171-13. Severability.**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof nor shall it invalidate any permit or determination which previously has been issued.